IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.7711 OF 2005

Shri G. R. Baviskar. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr. D. J. Bhange for the Petitioner.
Mr. V.P. Vanarse, AGP for the Respondents.
.....
CORAM : KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.

April 18, 2006.

P.C. :

The Petitioner, the then Member, Industrial Court, by the present petition under Article 226 of the Constitution, challenges the order of removal from Government service. The Petitioner was chargesheeted in respect of a complaint dated 4th May 2003 of one Mrs. Jyoti Shrishkumar Bhat, a stenographer of the Industrial Court at Nasik, wherein she alleged that the Petitioner had caused mental and sexual harassment to her. Thereafter, a departmental enquiry was held against the Petitioner. The Enquiry Officer examined the complainant and two other witnesses, viz., Mr. Abnave, a peon of the Industrial Court, Nasik and one Mr. Hujwant, P.A. to the Member, Industrial Court, Nasik. By the inquiry report,

the Enquiry Officer held charges levelled against the Petitioner proved. On 28th February 2005, the disciplinary authority issued a show cause notice to the Petitioner to show cause why a major penalty including penalty of dismissal as prescribed by Rule 5(1) (vii) to (ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, should not be imposed upon the Petitioner. The Petitioner submitted a detailed reply dated 29th March 2005. An order of removal from Government service, dated 20th June 2005, was passed by the Secretary, Industries, Energy and Labour Department under clause (VIII) of sub-rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 in pursuance to the order of removal passed by the Disciplinary authority. Hence the present petition.

We have heard the Learned Counsel for the parties. The Learned Counsel appearing on behalf of the Petitioner submitted that the punishment of removal from Government service awarded to the Petitioner is based on no evidence at all and, therefore, the findings of the enquiry officer are perverse. According to him, witness Abnave, a Peon of the Industrial Court and other witness have falsified the evidence of the complainant as the Petitioner

was not there in Chamber on 9th April 2003 and 3rd May 2003 after 5.30 p.m. In substance, Learned Counsel made submission on factual aspects only without challenging the legality of the inquiry.

Having perused the enquiry proceedings and the order passed by the disciplinary authority, we are not inclined to accept the submissions of the Learned Counsel for the Petitioner. The Enquiry Officer after appreciating the evidence of Mrs.Bhat and other witnesses wherein she has made allegations of sexual harassment against the Petitioner, rightly held the same are duly proved. The Enquiry Officer has also appreciated the evidence of other witnesses and has recorded that peon Abnave was on leave and, therefore, the defence that the Petitioner was not in Chamber is not accepted. The findings recorded by the Enquiry Officer are based on facts on appreciation of evidence. This Court cannot sit as appellate Court and reappreciate the same and that too in a Petition under Article 226 of the Constitution of India. Needless to say that we are in total agreement with the findings recorded by the Enquiry Officer and the order of penalty passed thereafter. Accordingly we do not find any merit in the petition. The petition is summarily dismissed.

CHIEF JUSTICE

Dr.D. Y. Chandrachud, J.